

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
LTD Broadband, LLC)	AU Docket No. 20-34
)	WC Docket No. 19-126
Petition to Deny Long Form Applications)	WC Docket No. 10-90
(FCC Forms 683) for Rural Digital Opportunity)	
Fund (“RDOF”) Phase I Auction Support in the)	
States of Minnesota and Iowa)	
To: The Commission		

OPPOSITION TO PETITION TO DENY

LTD BROADBAND, LLC

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OPPOSITION TO PETITION TO DENY

LTD Broadband, LLC (“LTD”), by counsel and pursuant to Section 1.45(b) of the Commission’s Rules, hereby opposes the unauthorized Petition to Deny (“Petition”) filed on March 22, 2021 by the Minnesota Telecom Alliance and the Iowa Communications Alliance (“MTA/ICA”) in the above-referenced dockets. The Petition seeks denial of LTD’s Auction 904 long-form application (“Application”) seeking Rural Digital Opportunity Fund (“RDOF”) Phase I support for designated census blocks in Minnesota and Iowa. The Commission should dismiss the Petition and, consistent with established procedures approved by a unanimous Commission, continue to thoroughly vet LTD’s Application to determine whether it is qualified to receive RDOF support.

Introduction and Summary

MTA/ICA join an off-key chorus of unsuccessful bidders disappointed in the outcome of the RDOF auction. Instead of re-examining their members’ bidding strategies, MTA/ICA pick out the winner of the largest amount of RDOF support and, relying on speculation, innuendo and surmise, call into question its financial and technical qualifications. They do so without any knowledge of LTD’s financial or technical qualifications or the contents of its Application, and,

tellingly, fail to include an affidavit or declaration under penalty of perjury to support their hollow claims; rather, they seem content to fling disparaging allegations against LTD that have no basis in fact and – to cover up the obvious flaws in their arguments – seek to shift the burden to LTD to try to prove what they cannot. The Commission should see past this gambit and dismiss the Petition.

Discussion

I. THE PETITION IS PROCEDURALLY DEFECTIVE

As MCA/ITA concede, there are no rules or procedures that authorize the filing of petitions to deny RDOF long-form applications.¹ Under the Communications Act, a petition to deny serves a specific purpose with respect to the Commission’s consideration whether an application for license to operate a transmitting station would serve the public interest.² Under Section 310(b)(2)(F), the Commission has also extended such procedures to applications to operate as a common carrier under Section 214 of the Act.³ But it has made no such provision for applications filed under Sections 1.21004 or 54.804 seeking to finalize support provisionally obtained under competitive bidding procedures for the Connect America Fund (“CAF”) and RDOF.⁴

Indeed, in crafting its RDOF rules and procedures, the Commission clearly intended to preclude competing and unsuccessful bidders from seeking denial of a successful bidder’s

¹ See Petition at 1.

² See 47 U.S.C. § 309(b) & (d) (“Any party in interest may file with the Commission a petition to deny any application (whether as originally filed or as amended) to which subsection (b) of this section applies,” where Section 309(b) applies to any “instrument of authorization” to operate certain types of transmission facilities, including those in the broadcasting and common carrier services as well as specifically enumerated types of aeronautical licenses).

³ See 47 C.F.R. § 63.20.

⁴ See 47 C.F.R. §§ 1.21004 and 54.804 (no provision for petitions to deny); *compare* 47 C.F.R. § 1.2108 (establishing specific petition to deny procedures for long-form applications filed following spectrum license auctions).

application. For example, in its *Report & Order* adopting these rules, it specifically rejected a proposal advanced by several commenters to “adopt a protective order to allow for access to long-form applications” stating that it was “not persuaded” that it “should allow outside parties to review confidential information in the winning bidders’ applications.”⁵ Such a process would lead to a Gordian Knot of litigation, with no barriers on the filing of petitions like the one MTA/ICA have filed. The Commission observed that “very few commenters addressed the Commission's proposed post-auction long-form application processes and none of those commenters raised significant concerns,” including with respect to the absence of provisions for petitions to deny.⁶ The Commission expressed its view that these rules facilitated “the Commission's ability to determine whether the applicants are ultimately eligible for Rural Digital Opportunity Fund Support authorization funding, providing a fair and efficient review process.”⁷ As it made plain in the subsequent Public Notice in which the winning bidders in Auction 904 were announced:

If the application and the information with respect to each winning bid in a particular state is complete and the long-form applicant has demonstrated that it is technically and financially qualified, WCB will release a public notice identifying the applicant and the winning bids for which the Commission is ready to authorize Rural Digital Opportunity Fund support.⁸

This simple process, relying on the Commission’s extensive staff experience and expertise, is all that is required, and avoids a lengthy, litigious process driven by the asserted grievances of unsuccessful bidders.

⁵ *Rural Digital Opportunity Fund; Connect America Fund*, 35 FCC Rcd 686, 725 (¶ 86) & n.248 (2020) (“*Report and Order*”).

⁶ *Id.* at 725 (¶ 86).

⁷ *Id.*

⁸ *Rural Digital Opportunity Fund Phase I Auction (Auction 904) Closes; Winning Bidders Announced; FCC Form 683 Due January 29, 2021*, Public Notice, 35 FCC Rcd 13888 (¶ 35) (WCB/OEA 2020).

While the Commission can entertain informal objections under Section 1.41 of its rules,⁹ it is under no obligation to do so,¹⁰ particularly given the prudential concerns outlined above. Using an informal objection to achieve what the rules do not otherwise permit, and indeed implicitly reject, would nullify the Commission's procedural rules. Moreover, the Commission cannot shift the burden of proof to LTD as part of this proceeding, as MTA/ICA argue.¹¹ It is a threshold requirement for petitions to deny and informal objections alike that the petitioner/objector make a showing that "grant of the application would be *prima facie* inconsistent with" the public interest and that these "allegations of fact shall, except for those of which official notice may be taken, be supported by affidavit of a person or persons with personal knowledge thereof."¹² MTA/ICA meet neither of these criteria; indeed, they've not even attempted to satisfy these requirements. As further detailed below, its pleading consists of nothing more than conjecture, surmise and innuendo. The Petition should be dismissed on this basis alone.

II. THE PETITION PRESENTS NO EVIDENCE WARRANTING DENIAL OF LTD'S APPLICATION

Assuming *arguendo* the Petition survives its serious procedural defects, its substantive claims fare no better. Reduced to its essence, the Petition resorts to rampant speculation in a transparent and anticompetitive effort to oust LTD from the long-form review process and deny

⁹ 47 C.F.R. § 1.41.

¹⁰ See, e.g., *Touchtel Corporation*, 29 FCC Rcd 16249, 16251 (¶ 7) (Broad. Div. 2014) ("the Commission has discretion whether or not to consider an informal objection").

¹¹ Petition at 3.

¹² 47 U.S.C. §309(d)(1) & (a); *KHNL/KGMB License Subsidiary, LLC and HITV License Subsidiary, Inc.*, 33 FCC Rcd 12785, 12795 (¶ 21) n.77 (2018) ("The Commission applies a two-step analysis to a petition to deny (or informal objection) under the public interest standard. First, it must determine whether the petition contains specific allegations of fact sufficient to show that granting the application would be *prima facie* inconsistent with the public interest"), citing *Astroline Communications Co., Ltd. Partnership v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988).

consumers in Minnesota and Iowa the benefits of Gigabit broadband service. Though unstated, MCA/ITA must be motivated by the chance that, if LTD's Application is denied, their members will get a second opportunity in RDOF Phase II to bid on the census blocks that LTD won. That is contrary to the policies underpinning RDOF – to support future-proofed networks to unserved rural Americans.¹³

Much of what MCA/ITA argues can be dismissed as irrelevant to the Commission's consideration of LTD's Application. The broadband speeds LTD currently makes available to customers has nothing to do with its commitment to offer Gigabit speeds over fiber under its RDOF commitment.¹⁴ LTD has no current legal requirement to offer Gigabit speeds; rather, it offers service tiers that are suitable to meet consumer demand in the communities it serves. That it does not currently offer gigabit service also does not mean that it is not "reasonably capable" of doing so as its RDOF authorization will require.¹⁵ Further, there is no requirement in the Commission's rules or auction procedures that require LTD to have offered Gigabit speeds to be eligible to apply for and obtain support to provide Gigabit fiber service. Unlike Gigabit fixed wireless, where Commission staff considered eligibility on a case-by-case basis,¹⁶ the auction procedures do not require any applicant to have deployed fiber to be eligible to bid for the Gigabit fiber tier. MTA/ICA's examination of LTD's current service plans has no bearing on the Commission's consideration of the technical aspects of its Application.

¹³ *See Report and Order.*

¹⁴ *See* Petition at 3 ("LTD does not presently offer residential broadband speeds anywhere close to the RDOF Gigabit service tier").

¹⁵ *Rural Digital Opportunity Fund Phase I Auction Scheduled for October 29, 2020; Notice and Filing Requirement and Other Procedures for Auction 904*, Public Notice, 35 FCC Rcd 6077, 6099 (¶ 64) (2020) ("*RDOF Auction Procedures Public Notice*") ("Reasonably capable" refers to the Commission staff's reasonable expectation that the applicant can meet those obligations.").

¹⁶ *Id.* at 6113 (¶ 100).

Also irrelevant is MTA/ICA's speculation that, as a small company, LTD Broadband may not be equipped to handle the obligations attendant to RDOF support authorization.¹⁷ Whether there is any "indication" that LTD is "now able to engineer, construct and operate FTTH or other predominantly fiber optic networks"¹⁸ assumes that LTD would have revealed its capabilities to MTA/ICA or that a backward-looking analysis of its size is somehow relevant to its future plans to deploy Gigabit tier service. Did MTA/ICA ever bother to ask LTD about its capabilities or plans? Of course not – it instead decided to remain uninformed and rely on innuendo so it could more easily cast aspersions on LTD.

MTA/ICA also point to LTD's default in two states following the Connect America Fund ("CAF") Phase II auction and its unsuccessful bid for Rural Broadband Experiment ("RBE") support.¹⁹ As MTA/ICA point out, LTD won only a single census block group in each of Nebraska and Nevada and determined that it would not be economically prudent to accept support in those two states for such small areas given the costs of compliance. Like other CAF applicants that defaulted, LTD reasonably determined that defaulting prior to receiving support was preferred over accepting support and facing challenges disproportionate to the buildout obligations. That LTD was unsuccessful in its RBE bid seven years ago also has no adverse impact on its qualifications here. However, LTD notes that, in contrast to MTA/ICA, LTD did not, as an unsuccessful applicant in that process, challenge the authorization of support to RBE recipients without having any knowledge of the contents of their winning bids.

Interestingly, MTA/ICA state that "LTD has been criticized by the Minnesota Department of Commerce" ("DOC") for allegedly failing to advertise Lifeline service.²⁰ This is

¹⁷ See Petition at 4.

¹⁸ *Id.*

¹⁹ See *id.* at 4-5.

²⁰ *Id.* at 5.

the same state agency that, on March 26, 2021, “recommends approval of the carrier’s petition for designation as an ETC in locations designated for the receipt of its RDOF award.”²¹ Like other ETC applicants discussed in the Comments, DOC stated that “LTD should be subject to the conditions established by the Commission for all petitioners.”²² DOC did not recommend additional conditions, as it did with certain of the other Minnesota ETC applicants. Plainly, DOC does not view any purported non-compliance with Lifeline obligations to be an impediment to grant of LTD’s ETC application, and neither should the Commission, to the extent it even has authority to do so.

Digging deeper into the depths of disparagement, MTA/ICA attack LTD’s purported service record, citing a Better Business Bureau review.²³ It apparently believes that the mere existence of 14 customer complaints, by itself and without any elaboration as to the substance of the complaints, is somehow excessive. But MTA/ICA fail to compare LTD’s customer service reputation with their own members’ or to explain that a small sample of nine reviews is significant enough to raise questions that should result in denial of LTD’s Application. MTA/ICA also ignore other sources of customer reviews such as Google, where LTD has a 4.44-star rating based on 81 customer reviews.²⁴ All that said, however, the Commission’s long-form review procedures do not consider customer reviews – there are post-authorization requirements regarding specific program requirements that the states and the Commission can enforce.

²¹ Comments of the Minnesota Department of Commerce on the petitions filed by Rural Digital Opportunity Fund Grant Winners, Docket No: P999/C1-21-86 (filed March 26, 2021) at 19.

²² *Id.*

²³ See Petition at 6.

²⁴ See <https://broadbandnow.com/LTD-Broadband> (last visited March 28, 2021). A sample of customer reviews: “We have had excellent service;” “I would recommend this service to those outside the conventional internet providers;” “Overall, it’s been the best Internet service for rural areas that we’ve ever had;” “I recommend LTD Broadband to anyone! I love the hometown feeling of a local company. For the price and the product that you get, it’s an amazing deal.”

Notably, MTA/ICA cite no instances where the state of Minnesota has acted on any complaints it may have received concerning LTD's compliance with state ETC requirements and consumer protection laws.

Perhaps the nadir of MTA/ICA's Petition is its reliance on entirely anonymous hearsay in its assertion that "MTA has heard reliable reports that LTD has approached at least one engineering firm to develop its Minnesota RDOF fiber network, and been told that the engineering firm had nowhere the available capacity to handle the LTD project on top of its existing clients and commitments."²⁵ MTA/ICA do not identify the source of its admitted "hearsay,"²⁶ the name of MTA's member who apparently "heard" it, when the report was allegedly "heard," the circumstances giving rise to this "report" (i.e., whether it was solicited by MTA), or the name of the "engineering firm" that is referenced. Nor did MTA/ICA submit an affidavit or declaration under penalty of perjury to support this rumor, as is required to document such allegations. Moreover, it is irrelevant that "MTA is aware of no evidence whatsoever that LTD possesses the technical, operational or administrative staff resources to build and run"²⁷ its RDOF network in Minnesota – MTA is not supposed to know, just as LTD is not entitled to see "evidence" of any other auction winners' resources, including those of MTA/ICA members. It is the Commission's job, consistent with the *RDOF Auction Procedures Public Notice*, to undertake a comprehensive review of the Application, and LTD stands ready to engage with Commission staff over the next several months to demonstrate its qualifications, including its staffing plans.

²⁵ Petition at 6.

²⁶ *Id.* ("MTA is not asserting that LTD's Long Form application(s) should be denied on the basis of assumptions or industry hearsay.").

²⁷ *Id.*

Admitting that they “do not have access to LTD’s financial statements,”²⁸ MTA/ICA nevertheless contend that LTD “appears to face a very substantial financial hurdle to build its Minnesota and Iowa RDOF broadband networks.”²⁹ It then offers construction cost estimates, claiming without citing any source that they are “reasonable,”³⁰ and states that “it is a relatively safe bet that LTD does not have liquid assets anywhere near the size of the amount needed.”³¹ Taking another step into fantasyland, MTA/ICA suggest that is “unlikely” that LTD will be able to sell a non-controlling interest because its support level is “so low that most potential minority investors will not be able to expect sufficient returns to make the investment attractive.”³² One cannot avoid noticing the circumspection in words like “appears,” “relatively safe bet,” “unlikely” and “most.” Nor can one escape the obvious lack of any factual support for these statements and – once again – the absence of any sources or declaration under penalty of perjury.

LTD notes an inherent hypocrisy in the Petition. On one hand, MTA/ICA ask the Commission to:

place a substantial and stringent burden of proof on LTD to demonstrate reasonable, workable and detailed technical plans for constructing and operating its RDOF broadband networks (including existing or substantially negotiated arrangements with vendors, lessors and transport providers), and to show that it has clear and certain access to the financial resources necessary to meet the realistic and detailed costs of such technical plans.³³

In making this request, albeit with no factual basis, MTA/ICA ask the Commission to impose on LTD (but not other applicants) and on its own staff more stringent long-form review obligations

²⁸ *Id.* at 7.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.* MTA/ICA present no information that they have contact “potential minority investors” to determine that “most” would not find the investment attractive. In the absence of any evidence, statements such as this can be given no credibility whatsoever.

³³ *Id.* at 8.

that are not part of the auction procedures the Commission unanimously approved before the auction. The notion of having “substantially negotiated arrangements” is not required.³⁴ As for “clear and certain access to financial resources,”³⁵ the auction procedures impose a different standard, requiring an applicant to “certify in its long-form application that it is financially and technically capable of meeting the relevant public interest obligations for each performance tier and latency combination in the geographic areas in which it seeks support.”³⁶ Commission staff, relying on its experience and expertise, will then determine if the applicant is “reasonably capable” of meeting its performance obligations. Applicants also must submit a letter of credit commitment letter, an irrevocable standby letter of credit and a bankruptcy opinion letter before RDOF support can flow, requirements that ensure the applicant has formed an independent relationship with a qualified banking institution and that the Commission can recover funds under the letter of credit if the applicant becomes bankrupt.

But in the next breath, MTA/ICA cite “rumors in the trade press” – not attributed to LTD or, for that matter, any other RDOF applicant – that “some” auction winners “may be asking or planning to ask the Commission to change the RDOF auction rules retroactively to allow them to receive support for broadband speeds less than the Gigabit services that they bid upon and ‘won.’”³⁷ Such uncited “rumors” about “plans” of “some” RDOF auction winners cannot be the basis to deny LTD’s Application. At best, MTA/ICA’s prediction about what may happen in the future is entirely speculative. At worst, its proposal to impose unauthorized obligations on LTD but oppose possible, future efforts to change or waive the rules is hypocritical.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *RDOF Auction Procedures Public Notice* at 6166 (¶ 298).

³⁷ Petition at 8-9.

It may be true that “[i]n Minnesota and Iowa, MTA and ICA members were ready, willing and able to provide the Gigabit service tiers that they proposed.”³⁸ So was LTD, and it was willing to bid in a manner that enabled it to succeed in the auction while certain unnamed members of MTA and ICA fell short of their own aspirations. That is the nature of auctions – some win and others lose. But that is not an open invitation for unsuccessful applicants to try to spin gold from the brittle straws of speculation, innuendo, and rumor to openly attack a successful party that will be subject to thorough and rigorous Commission staff review. The Commission should not allow the MTA/ICA smear campaign to distract its staff from the work it has ahead to review all RDOF applicants’ long-forms consistent with the procedures the Commission unanimously adopted and upon which all applicants relied.

Conclusion

The Petition is a blatant attempt by disappointed auction participants to tarnish LTD’s Application amid ongoing staff review. It is rare to see a petition to deny have no basis in fact and rely solely on conjecture, innuendo, and rumor, with no supporting documentation and no declaration under penalty of perjury. The Petition should be dismissed or denied.

Respectfully submitted,

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April 1, 2021

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³⁸ *Id.* at 9.

CERTIFICATE OF SERVICE

I, Stephen E. Coran, hereby certify that on this 1st day of April, 2021, a true and correct copy of the foregoing Opposition to Petition to Deny was sent by electronic mail to the following:

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